

REMARKS

Favorable reconsideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

Claims 1-5, 7-12, and 14-20 are currently pending. Claims 6 and 13 have been canceled without prejudice by the present amendment.

In the outstanding Office Action, Claims 1-4, 7-10, and 14-20 were rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over Claims 1, 8-14, and 17-20 of U.S. Patent No. 6,988,141; Claims 6 and 13 were rejected under 35 U.S.C. § 112, second paragraph; and Claims 1-20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,212,160 to Barbieri et al. (hereinafter “the ‘160 patent”) in view of U.S. Patent No. 5,818,603 to Motoyama (hereinafter “the ‘603 patent”) and U.S. Patent No. 6,134,680 to Yeomans (hereinafter “the ‘680 patent”), further in view of the Muralidharan reference (“Multiprotocol Management Agents: A Look at an Implementation and the Issues to Consider”).

Applicants respectfully submit that the double-patenting rejection of the claims is rendered moot by the Terminal Disclaimer filed herewith.

Applicants respectfully submit that the rejections of Claims 6 and 13 under 35 U.S.C. § 112, second paragraph, are rendered moot by the present cancellation of those claims.

Claim 18 is directed to a computer-implemented method for causing at least one of a device, an appliance, an application, and an application unit to control a protocol used for data communication to a remote receiver, the method comprising: (1) providing plural application-layer communication protocols for transferring data; (2) selecting a first protocol among the plural application-layer communications protocols to transfer data to the remote receiver from the at least one of a device, an appliance, an application, and an application unit; (3) selecting a second protocol among the plural application-layer communications

protocols to transfer data to the remote receiver from the at least one of a device, an appliance, an application, and an application unit; (4) collecting events at the at least one of a device, an appliance, an application, and an application unit; (5) performing a first attempt to transfer the collected events to the remote receiver from the at least one of a device, an appliance, an application, and an application unit using the first selected protocol; and (6) performing a second attempt to transfer the collected events to the remote receiver from the at least one of a device, an appliance, an application, and an application unit using the second selected protocol regardless of whether the first attempt was successful, automatically without human intervention.

Regarding the rejection of Claim 18 under 35 U.S.C. § 103(a), the Office Action asserts that the ‘160, ‘603, and ‘680 patents disclose everything in Claim 1 with the exception of “attempting to transfer collected events using a second protocol regardless of whether a first attempt using a first protocol was successful,”¹ and relies on the Muralidharan reference to remedy that deficiency.

The ‘160 patent is directed to a method of automatically selecting a protocol to match the protocol of a communication network. In particular, the ‘160 patent discloses that a device initially attempts to communicate by using a preferred one of the communication protocols and attempts to communicate by using another one of the protocols if the initial attempt fails. However, as admitted in the outstanding Office Action, the ‘160 patent fails to disclose the step of providing plural application-layer communication protocols for transferring data. Moreover, Applicants respectfully submit that the ‘160 patent fails to disclose the step of selecting a first protocol among the plurality application layer communication protocols to transfer data to the remote receiver from the at least one of a device, an appliance, an application, and an application unit, as recited in Claim 18. Since

¹ See page 5 of the outstanding Office Action.

the ‘160 patent does not disclose application-layer protocols, it cannot disclose selecting a first protocol among the plural application-layer communication protocols. Moreover, the ‘160 patent discloses that “the application first attempts … to establish a communications channel by using the preferred protocol.” Thus, the ‘160 patent does not disclose that a protocol is selected among plural protocols, as required by Claim 18.

The ‘603 patent is directed to a method and system for controlling and communicating with machines using multiple communication formats. The ‘603 patent discloses that, after information is transmitted from a first device to a second device and upon receiving the information, the second device determines a communication protocol utilized by the first device by looking up an identifier contained within the information to determine a format of a header of the transmission. Further, the ‘603 patent discloses that the second device then parses the header of the transmission used in the format of the header which was determined, and determines the communication protocol using information in the header which was parsed using the format of the header. However, Applicants respectfully submit that the ‘603 patent fails to disclose providing plural application-layer protocols for transferring data, performing a first attempt to transfer collected events using the first selected protocol, and performing a second attempt to transfer the collected events using the second protocol regardless of whether the first attempt was successful, automatically without human intervention, as required by Claim 18.

The ‘680 patent is directed to an error handler for a proxy server computer system that receives a universal resource locator (URL) from a remote user terminal, automatically modifies the universal resource locator in response to a detection of a failure by an accessing means to access a data file on the server, and returns data indicating the error and offering remedial options to the user. As shown in the flowcharts of Figures 5 and 6, the ‘680 patent discloses that, in step 470, when no response has been received from the server, the error

handler tries to reach the URL via alternative protocols, e.g., echo or FTP, stored in the protocol store 560. Further, the '680 patent discloses that, if contact is made with the URL via one or more alternative protocols, the error handler sends a text message back to the browser for display to the user listing the available protocols for contacting the website as hyperlink text, from which the user can select an alternative destination for the WWW page request.² Thus, as shown in step 500 in Figure 6, the '680 patent discloses that if contact can be made with the server using the alternative protocol, the user is provided with options as to how they wish to proceed.

However, Applicants respectfully submit that the '680 patent fails to disclose the step of performing a second attempt to transfer the collected events to the remote receiver from the at least one of a device, an appliance, an application, and an application unit using the second selected protocol regardless of whether the first attempt was successful, automatically without human intervention, as recited in Claim 18. Rather, the '680 patent discloses that human intervention is necessary before a second attempt to transfer data is performed. Further, Applicants respectfully submit that the '680 patent fails to disclose the step of selecting a first protocol among the plural application-layer communication protocols, as recited in Claim 18. Rather, the '680 patent discloses that HTTP is always used to retrieve the webpage with the first attempt.

Thus, as discussed above, no matter how the teachings of the '160, '603, and '680 patents are combined, the combination does not teach or suggest the step of performing a second attempt to transfer the collected events to the remote receiver from the at least one of a device, an appliance, an application, and an application unit using the second selected protocol regardless of whether the first attempt was successful, automatically without human intervention, as recited in Claim 18. Moreover, Applicants note that page 5 of the

² '680 patent, column 6, lines 44-62.

outstanding Office Action admits that the combination of these three patents fails to teach the second performing step recited in Claim 18.

The Muralidharan reference is directed to an implementation of a multiple protocol management agent for the management of a same set of objects over multiple protocols. The Muralidharan reference discloses that the management agent allows for the management of a generic network such as a gateway that operates at the transport level of several communication protocol stacks and thus has several modules to be managed corresponding to the lower layers of each protocol stack. In particular, as shown in Figure 3, the Muralidharan reference discloses that the implementation of the multiple protocol management agents is based on a utility called the “Common Agent” that supports concurrent use of multiple management protocols and provides a standard interface to the managed objects. The Muralidharan reference discloses that the purpose of the management agent is to have one agent that converges the various protocols into one protocol independent or generic interface.³ In particular, the Muralidharan reference discloses that the one agent that performs the convergent function is referred to as the management access daemon (MAD), which is divided into three parts: (1) the Common Agent interface, (2) the interface with the subagents, and (3) the convergence and bookkeeping functions. The Muralidharan reference discloses that the MAD process needs to identify the management protocol carrying the management request for correct interpretation of the application-wide data tags and that the MAD agent determines the management protocol by taking advantage of the fact that the class object identifier (OID) for the same object class would be different over different protocols, due to their membership in different management trees. Thus, the MAD process maintains two sets of class OIDs for each object class. Thus, Applicants respectfully submit

³ See Muralidharan reference, page 1338, right column.

that the Muralidharan reference simply discloses a software agent that converges various protocols into one protocol-independent generic interface.

However, Applicants respectfully submit that the Muralidharan reference fails to disclose the step of performing a second attempt to transfer the collected events to a remote receiver from at least one of a device, an appliance, an application, and an application unit using a selected second protocol regardless of whether the first attempt was successful, automatically without human intervention, as recited in Claim 18. The Muralidharan reference does not disclose that a second protocol should be used regardless of whether a first attempt was successful automatically without human invention. Rather, the Muralidharan reference merely discloses a generic interface for managing objects over several protocols, but does not teach or suggest that a second protocol should be used regardless of whether a first attempt with a first protocol was successful, automatically without intervention, as recited in Claim 18. In this regard, Applicants note that the Office Action refers to section III of the Muralidharan reference, which describes the Common Agent on page 1337. That section merely describes an agent that can interface with multiple management protocols at the same time, and provide a standard interface to management objects, ***but does not disclose anything about whether a second protocol should be used regardless of whether a first attempt using the first protocol was successful.***

Thus, no matter how the teachings of the '160 patent, the '603 patent, the '680 patent, and the Muralidharan reference are combined, the combination does not teach or suggest performing a second attempt to transfer the collected events to the remote receiver using the second selected protocol regardless of whether the first attempt was successful, automatically without human intervention, as recited in Claim 18. Accordingly, Applicants respectfully submit that a *prima facie* case of obviousness has not been established in the rejection of Claim 18 should be withdrawn.

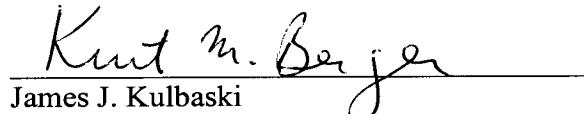
Because the combination of the cited references does not disclose the second performing step recited in Claim 18, it cannot disclose the sixth computer code device recited in Claims 1 and 8, as well as the second performing step recited in Claim 19. Accordingly, for the reasons stated above, Applicants respectfully submit that a *prima facie* case of obviousness has not been established and that the rejections of Claims 1, 8, 19 (and all associated dependent claims) should be withdrawn.

Thus, it is respectfully submitted that independent Claims 1, 8, 18, and 19 (and all associated dependent claims) patentably define over any proper combination of the '603, '160, '680 patent, and the Muralidharan reference.

Consequently, in view of the present amendment and in light of the above discussion, the outstanding grounds for rejection are believed to have been overcome. The application as amended herewith is believed to be in condition for formal allowance. An early and favorable action to that effect is respectfully requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



James J. Kulbaski
Attorney of Record
Registration No. 34,648

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 03/06)

Kurt M. Berger, Ph.D.
Registration No. 51,461